

ILLINOIS COMMERCE COMMISSION )  
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ILLINOIS ENERGY SOLUTIONS )

COMMENT OF LOW INCOME UTILITY ADVOCACY PROJECT ON  
BEHALF OF COMMUNITIY ACTION FOR FAIR UTILITY PRACTICE AND  
SOUTH AUSTIN COALITION COUNCIL

South Austin Coalition Community Council and Community Action for Fair Utility Practice collectively referred to as Low Income Residential Consumers or “LIRC” by their attorney Allen W. Cherry and the Low Income Utility Advocacy Project submit these comments

## INTRODUCTION

LIRC have a long history, extending back more than 30 years, of advocating before federal and state courts, federal and state administrative bodies, state, federal and local legislative and executive bodies on issues including rate cases, customer service regulations, weatherization/energy efficiency and energy assistance.

Energy is not affordable to the many low-income households. The current crisis will only get worse without intervention. There is a simple equation behind this and the solution is also simple in concept: increase the income of low-income households or decrease their bills. LIHEAP is the way to increase income while energy efficiency is the best method to reduce bills. Energy efficiency programs are often superior to bill assistance programs because spending \$1 on efficiency benefits the household by an amount greater than \$1. Also, percentage of income payment plans have great potential to allow low-income households to manage their bills and retain essential utility service. Finally, rational customer service regulations, which today are absent in Illinois, are also an essential element of low-income households obtaining or retaining essential utility service.

## STEPS MUST BE TAKEN TO ENSURE PARTICIPATION BY LOW-INCOME GROUPS

The ability of LIRC to participate in Commission proceedings in recent years has been hindered by lack of funds to do this. CAFFUP and SACCC were regular participants 15, 25 and 35 years ago but in the current environment do not have resources to effectively present their views. No other low-income advocate or groups have taken their place.

There is harm to the Commission and its decision making process when important voices are not heard and necessary information presented. Of course, this is not solely the Commission's fault nor is it solely the Commission's responsibility. Still, as in other areas, there is nothing preventing the Commission from making other appropriate bodies aware of this serious problem or of convening stakeholders to begin addressing this important concern.

The Public Utilities Regulatory Policies Act of 1978 addresses this to an extent, 16 U.S.C. 2632(a)(1). However, those provisions require the petitioning party to expend resources on spec, as it were, which is very problematic as it presumes organizations are able to front the resources and willing to risk not being fairly compensated. Also, LIRC are unaware of this Commission ever entering an intervenor funding order since this provision's 1978 enactment.

### **ENERGY EFFICIENCY PROGRAMS ARE ESSENTIAL TO MAKING ENERGY AFFORDABLE TO LOW-INCOME HOUSEHOLDS - THE PAYS PROGRAM HOLDS GREAT PROMISE IN THIS AREA**

The Commission's "Questions for Interested Parties" reflect a clear preference for market-based and consumer education initiatives to retail electric customers in order to reduce peak-load consumption as well as to promote energy conservation. The Commission appears to focus on energy assistance programs such as LIHEAP to help low-income customers.

LIRC accept the premise that an informed consumer in a working market would provide substantial peak-load and energy consumption reductions. Unfortunately, while information is

important, the reality is that even informed consumers need a working market: something that does not exist and is not likely to exist for the foreseeable future in Illinois. The Commission does not have the power to create a working market due to significant market imperfections such as:

**Competition for Capital (first cost)** - Unless a program offers free measure installation, participants are required to come up with some money. Most consumers have other pressing concerns: paying medical bills, fixing their cars or homes, making rent or mortgage payments or sending their children to good schools. Even buying Christmas gifts or new cars competes with the capital needed to buy energy efficiency, so most people do not think they have enough money to afford to buy efficiency products.

**Customer Debt Obligation** - Some consumers could borrow the capital, but their debt capacity may be limited or maxed out. Their credit could be sketchy or they could be saving their debt capacity for other more important purchases (a car or a house). Not everyone is willing or able to borrow the required capital.

**Uncertainty About Duration of Occupancy** - When consumers buy efficiency measures, they must pay up front or commit to long payments based on the assurance of savings. But what if they relocate before they obtain the expected savings? What if the product breaks down before they get the savings that will pay them back? What if they are renting? Does it make sense for them to invest in the landlord's building? All the risk and burden associated with getting savings is put on the occupant who is paying the utility bill and whom we want or hope will purchase efficiency products. This risk is a real disincentive to investing in energy efficiency.

**Split Incentives** - Most programs ignore the concerns of renters, a good percentage of both residential and commercial utility customers. These customers can legitimately ask, “Why should I pay to improve my landlord’s building?”

The best way to overcome the above market barriers and to incent customers to reduce both peak-load consumption and energy consumption, while at the same time providing major additional benefits to low-income consumers at minimal cost to ratepayers, would be implementation of the Pay-As-You-Save® (“PAYS®”) in Illinois.

PAYS® is a new market-based system designed to break through the twin barriers of poorly functioning efficiency markets and limited availability of public funds, and expand efficiency investments. Under PAYS®, third-party capital invested in energy efficiency measures is recovered through tariffed charges on the PAYS® customers’ utility bills even as they realize net bill savings from lower usage. PAYS® stimulates investment in energy efficiency by providing energy users with the opportunity to install cost-effective energy efficiency measures in their homes and businesses with no up front payment, no debt obligation, and the assurance that if measures fail they will be replaced or payments stopped. Charges are assigned to a meter location so individual consumers only pay while they remain a customer at that location. If they vacate the premises before PAYS® charges are fully paid off, the next occupant (who will also enjoy the bill savings) assumes the remainder of the payments.

Cost-effective building energy efficiency projects typically pay for themselves in energy savings in four to seven years. This savings stream is sufficient to pay for all costs associated with installing measures – administrative and installation costs and a reasonable return to capital providers -- and still provide customers with significant net annual savings. A typical PAYS®

energy efficiency project provides a return comparable to a 15%, twelve-year bond by harvesting the savings from more than the four to seven year payback period of a measure's useful life.

The housing market overcame the "first cost" barrier with the creation of the home mortgage system and consumer products are often sold using a system of monthly installments. These are familiar examples of how financial packaging transforms what people perceive as unaffordable products into affordable products. PAYS® can do the same, but as with mortgages and consumer financing, it requires regulatory authorization, in this case through changes in the rules set by the Commission.

### **DESCRIPTION OF PAYS**

**A. Essential Elements of PAYS®** There are three essential elements of the PAYS® system:

- ! a tariff assigned bill paying responsibility to a meter location, not to an individual customer,
- ! billing and payment on the utility bill with disconnection for non-payment, and
- ! independent certification that products are appropriate & savings estimates exceed payments.

#### **1. Assignment to Bill Paying Responsibility to Meter Location .**

Assignment of bill paying responsibility to a meter location is essential since it effectively eliminates any concern tenants or homeowners might have regarding whether their length of occupancy will be long enough to realize all of the savings of the PAYS® measures. In addition, since payment obligations are assigned to a meter as opposed to an individual, individual or corporate customers do not assume any new debt in order to have PAYS® measures installed. There is, therefore, no barrier for those individuals or businesses with any

debt issues (including customers, especially businesses, with no bad debt who want to reserve debt capacity for other purposes).

Assignment of bill paying responsibility to a meter location also helps to overcome the barrier of split incentives, since tenants will pay for measures that will provide cost-effective benefits during their tenancy without worrying that they will have to fully pay for measures whose benefits will accrue to the landlord and future tenants.

## **2. Billing and Payment on the Utility Bill with Disconnection for Nonpayment.**

Both billing and payment on the utility bill and disconnection for nonpayment of PAYS® charges are essential elements without which PAYS® will not be successful. Billing and payment on the utility bill provides a cost-effective mechanism to collect PAYS® charges, since vendors of energy efficiency measures can take advantage of an existing billing mechanism and only have to pay for the incremental cost of billing for PAYS®.

The threat of disconnection has been demonstrated to dramatically decrease uncollectibles and thus provides a secure revenue stream that will entice capital providers to provide the necessary upfront capital for PAYS®. Vendors, utilities and other third party capital providers are only going to be interested in financing the installation of resource efficiency measures as such as PAYS® products if they have a reliable repayment policy. Mechanisms typically used to enforce repayment include liens, foreclosures, and court actions. The regulatory system uses a different approach to achieving high repayment rates. The threat of disconnection enables the regulatory system to achieve much higher repayment rates than those realized by credit card companies or even mortgage companies. Nationally, utility bad debt is between zero and three percent. In the NH PAYS® pilots, customer nonpayment for PAYS® products at Public Service of New Hampshire was zero; at New Hampshire Electric Cooperative

bad debt was less than eight hundredths of one percent. For PAYS® to attract the capital necessary to finance widespread installation of measures, disconnection for nonpayment is an essential element of the PAYS® system.

The availability of that upfront capital, made possible by the utility billing and collection with threat of disconnection, makes it possible for PAYS® to require no upfront payment so that access to capital is eliminated as a barrier.

### **3. Independent Certification that Products Are Appropriate and that Savings Estimates Exceed Payments.**

Independent certification of all savings estimates and the appropriateness of PAYS® products is another essential elements of PAYS®, since it is necessary to provide customers assurance that the installed measures will work as promised. Certification effectively eliminates any customer concern that a fast-talking salesperson is trying to con a customer into paying for measures that will turn out to be worthless.

### **B. Relationship to Existing Programs.**

While the PAYS® system does not require the intervention of a traditional efficiency program, it can be used to make traditional resource efficiency programs involving customer co-payments work better. When operated within the PAYS® system, these programs will reach more customers and more types of customers.

### **C. Benefits for Low-Income Consumers.**

PAYS® provides the same benefits to low-income consumers as to all other consumers; market barriers are overcome and low-income consumers obtain the same access to increased capital. Recognizing that low-income consumers will be particularly wary of expending limited resources on energy efficiency measures, even though those measures will be certified to save

more than they cost, we recommend that the Commission work with other state agencies to consider using LIHEAP, Energy Trust Fund and .... to assist low-income customers with their payments. We recommend that assistance be provided that would pay down one-third of the cost of efficiency measures in the homes of low-income customers or, in the alternative, that would pay for one-third of the monthly PAYS® payments.

**C. Track Record.**

PAYS® has been tested and evaluated with customers in pilot programs at two New Hampshire utilities. An independent evaluation by GDS Associates, Inc. and testimony in a recent docket, convinced the New Hampshire Public Utilities Commission to order the two utilities to continue to offer PAYS® products to customers (the evaluation and testimony regarding the New Hampshire pilots is available at [www.paysamerica.org](http://www.paysamerica.org)).

Therefore, LIRC requests that the Commission consider implementation of PAYS® in Illinois and work with other state agencies to provide assistance to low-income consumers that will either pay up-front for one-third the cost of PAYS® measures or pay one-third of PAYS® payments.

There are, at least, three possible sources for securing the consumer's up-front payment. The State's Department of Healthcare and Family Services sets aside the maximum allowed for weatherization measures from the federal supplied (LIHEAP) and state supplied (ratepayer funding through the meter charge) funds it receives. In addition, REACH is a special research program to test out new and novel ways of delivering LIHEAP and PAYS® would be a perfect fit with REACH.

### LIHEAP FUNDING IS INADEQUATE

With a ratepayer funded statewide supplement to LIHEAP, Illinois funds low-income energy assistance to a greater extent than any state. While that is good, there remains a large gap between the resources available to low-income households and their energy bills, a gap that will greatly increase in the near future.

Energy still is not affordable for many LIHEAP households; of course, this problem is much greater for households who are not able to obtain LIHEAP grants before the yearly pool of money runs out. See pages 3-4 of the Affordable Energy Plan: [http://www.icaanet.org/positionpapers/il\\_aff\\_energy\\_plan.pdf](http://www.icaanet.org/positionpapers/il_aff_energy_plan.pdf). Obviously, the concerns raised in that report about affordability in 2004 will be much greater in 2007.

For the year 2005, the well-known consulting firm Fisher, Sheehan and Colton computed the energy gap in Illinois at \$729 per household for a statewide total of \$783,264,136. With the fly up of natural gas prices, this amount increased to a gap of \$1129 per household in 2006. See [http://www.fsconline.com/work/heag/heag\\_2005.htm](http://www.fsconline.com/work/heag/heag_2005.htm). In sum, LIHEAP will not do enough to prevent the looming affordability crisis. Increases in electric bills due to occur in 2007, from both traditional rate cases and the use of the auction process to secure power, will make this problem worse.

### CURRENT CUSTOMER SERVICE REGULATIONS ARE INADEQUATE

Being able to obtain or retain necessary utility service is about more than affordability. It also requires a rational and adequate system of customer service regulations. The current rules (83 Ill.Admin.Code. Part 280) provide insufficient protection for low-income persons. The principal flaw is that the rules set out in Part 280 fail to distinguish between a household that cannot afford to pay its utility bills and one that is unwilling to pay. While utilities often make

statements explicitly recognizing this distinction, their practices reflect a cynical belief that virtually all customers can afford to pay despite strong evidence to the contrary.

The contention that Part 280 is not adequate is a conclusion that is neither controversial nor new to this Commission. On March 13, 1985, in Docket 84-0262, the Commission made an explicit finding that “the evidence of record shows the present rules regulating deposits, past-due bills, deferred payment agreements, budget payment plans, discontinuance and reconnection of service do not meet the needs of low-income customers” page 26. “It is obvious” stated the Commission on page 23 “from testimony that many low-income customers need a payment plan which will assure them of uninterrupted service.

Nothing has been done to improve Part 280 since 1985. Three current proceedings have the potential to greatly improve Part 280 although there is also a petition by the utilities in the state to make Part 280 harsher upon low income households.

The response of the utility companies in the state to the pending affordability crisis has been to seek an increase in the situations where service can be denied or disconnected while also easing restrictions on how and when service can be terminated, ICC Docket 05-0237. LIRC have opposed there, and continue to take the position here, that each of the proposed changes should be rejected. LIRC do not seek to litigate the case in this comment but no one can dispute the need to subject to scrutiny any proposals that will lead to a more brutal Part 280.

In Docket 06-0202, LIRC have proposed changes to Part 280 that will create a more rational and fairer Part 280 by recognizing the difference between “can’t pay” and “won’t pay” (the nomenclature often used by all stakeholders to describe the problem). Among other provisions, the proposal specifically removes deposit and late payment charge requirements from low-income households where those provisions do not perform their intended function but are

merely punitive. Consumer and Governmental parties in Docket 06-0379 have proposed a number of changes that improve Part 280 for all customers and take important steps to ensure uninterrupted provision of essential utility service.

**PERCENTAGE OF INCOME PAYMENT PLANS  
ANSWER MANY OF THE CONCERNS RAISED HERE**

Percentage of Income Payment Plans are a great way to make energy affordable to low-income households. They are the best single step the Commission can take to address the current crisis. A Percentage of Income Payment Plan (“PIPP”) allows a household to retain service by paying a percentage of total household income toward the bill.

There was a PIPP in Illinois in the mid 1980s. It was hugely successful at allowing low-income customers to retain uninterrupted service. Moreover, it benefitted utilities and ratepayers by increasing the amount low-income households paid to utility companies. The explanation for that is a simple one. When someone is given an affordable payment, as opposed to one that is wildly beyond the households budget, the person is much more likely to pay something.

The Commission has legal authority to adopt a PIPP and doing so would be good policy. Efforts are currently taking place, again among stakeholders, to restructure the LIHEAP system to implement at the minimum a pilot program. This is a good development but should not lead the Commission to fail to go ahead in this area.

Respectfully submitted,

South Austin Coalition Community Council

Community Action for Fair Utility Practice

By their Attorneys

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Low Income Utility Advocacy Project